

Advisory Council on Historic Preservation FAQ for the FEMA Prototype Programmatic Agreement

Prototype Programmatic Agreements (PPAs) are a type of program alternative that the Advisory Council on Historic Preservation (ACHP) can designate to assist federal agencies in their efforts to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and its implementing regulations (36 CFR Part 800). PPA's may be used for the same type of program or undertaking in more than one case or area, and typically establish efficiencies and protocols for implementing these undertakings. If a federal agency is interested in pursuing a PPA, they must first consult with the ACHP, to ensure that this is the appropriate program alternative for their agency. Once a PPA has been designated by the ACHP, agencies may proceed to develop and execute it with the relevant State Historic Preservation Officers (SHPOs)/Tribal Historic Preservation Officers (THPOs), and/or tribes and Native Hawaiian organizations (NHOs) and other relevant consulting parties without the participation of the ACHP.

In December 2013, the ACHP designated the Federal Emergency Management Agency (FEMA) PPA, which establishes a national model for FEMA to negotiate Section 106 state-specific Programmatic Agreements with SHPOs, State Emergency Management Agencies (SEMAs), and/or tribe(s) and NHOs, as appropriate. This FAQ is tailored to specifically address how the FEMA PPA may be used as a model by other agencies to develop their own PPA. In addition, FEMA's PPA allows other agencies to become signatories to FEMA's state-specific programmatic agreement (PA) for disaster recovery activities when appropriate.

Please go here for additional information about the PPAs:

http://www.achp.gov/docs/guidance_prototype_agreements.pdf

1. Why did FEMA pursue a Prototype Programmatic Agreement?

In 2010, FEMA notified the ACHP of its intention in pursuing a PPA to establish a national framework for compliance with Section 106 of the NHPA for all of FEMA's programs. FEMA felt it needed to have a consistent approach in dealing with Section 106 reviews for disaster response, recovery, and preparedness projects occurring across the nation. Further, a PPA would allow FEMA to more efficiently negotiate with states, and/or tribes, NHOs and other relevant parties on an agreement that had already been preapproved by the ACHP. FEMA felt that by developing a PPA it could expedite the review of the majority of routine activities that have limited potential to affect historic properties; provide predictability in treatment measures of historic properties; and ensure flexibility and responsiveness to state and tribal concerns.

2. What steps did FEMA pursue in order to develop and have the ACHP designate a PPA?

Over the course of three years, FEMA and the ACHP worked together to draft, finalize, and designate the PPA. FEMA's timeline for managing the effort is provided below:

April 2010-FEMA contacted the ACHP and advised that they would like to pursue a PPA, as an alternative procedure to the standard 106-review for disaster recovery projects. The ACHP concurred with FEMA's choice and asked FEMA to arrange for consultation and public involvement as appropriate to develop the subject matter and scope of the proposed PPA.

May and June 2010-The ACHP convened teleconference listening sessions with SHPOs and Indian tribes.

August 2010-FEMA led a session at the National Association of Tribal Historic Preservation Officers (NATHPO) annual conference to discuss tribal concerns with the development of a PPA.

September 2010-FEMA hosted a two-day listening session in Washington, D.C. with SHPOs and the National Conference of State Historic Preservation Officers (NCSHPO) to discuss common concerns identified in the listening sessions hosted by the ACHP.

January 2011-FEMA held a listening session with various tribes in Albuquerque, New Mexico, to discuss tribal concerns and recommend improvements to FEMA's approach to Section 106 tribal consultation.

January 2011-FEMA convenes internal working group consisting of regional and headquarters staff who work in disaster response and recovery related to historic preservation reviews which remained active throughout the three-year process to develop the PPA. Group begins drafting PPA with comments received from listening sessions conducted by the ACHP and FEMA.

September 2011-FEMA shares the initial draft of the PPA with select SHPOs and incorporated their comments into the draft PPA.

Fall 2011-Winter 2012-Internal review by FEMA Working Group and Regional Environmental Officers.

April 2013-FEMA, the ACHP, New Jersey SHPO, New Jersey Office of Emergency Management, Shawnee Tribe of Oklahoma, Absentee Shawnee Tribe of Indians of Oklahoma, Delaware Nation, Stockbridge-Munsee Community Band of Mohicans, and Delaware Tribe of Indians entered into a Programmatic Agreement for undertakings as the result of Hurricane Sandy that is largely modeled off of the PPA.

May 2013- FEMA, the ACHP, New York SHPO, New York State Office of Emergency Management, Delaware Nation, Stockbridge-Munsee Community Band of Mohicans, Delaware Tribe of Indians, Shinnecock Nation, and the New York Landmarks Preservation Commission entered into a Programmatic Agreement for undertakings as the result of Hurricane Sandy that is largely modeled off of the PPA. FEMA briefs Department of Homeland Security (DHS) about the draft PPA.

June 2013-FEMA programs and Office of Chief Counsel review the draft PPA.

July - August 2013-The draft PPA is circulated to State and Tribal Emergency Managers for review.

September 2013-(DHS transmits the draft PPA over to the ACHP for review.

October 2013-The ACHP posted the draft PPA on its Web site and sent out an email blast to Federal Preservation Officers, SHPOs, and THPOs for review and comment.

November 2013-FEMA and the ACHP met to discuss comments received from FPOs, SHPOs, and THPOs. Comments were integrated into the PPA, and the PPA is finalized. A follow-up listening session was held with SHPOs to address additional comments submitted to FEMA.

December 2013-The ACHP chairman designates the FEMA PPA and transmits the designation letter to DHS and FEMA.

For additional information on Prototype Programmatic Agreements

http://www.achp.gov/docs/guidance_prototype_agreements.html

3. What are the key elements of the FEMA PPA that provide efficiencies in the Section 106 review process?

Some of the key efficiencies in the PPA include the following:

1. FEMA can negotiate state-specific agreements, allowing states to tailor certain portions of the PPA to be more focused on the unique aspects of the state and implementation of its programs.
2. FEMA may choose to adopt the findings and determinations of other federal programs and agencies if the scope and effect are the same, and the agency has completed its Section 106 responsibilities.
3. Allows federal agencies, including states and units of government who have assumed environmental responsibilities of the U.S. Department of Housing and Urban Development

(HUD), with concurrence from signatories, to use the PPA to satisfy their Section 106 responsibilities when the types of activities the agency is undertaking are the same listed in the PPA.

4. Explains the roles and responsibilities of the signatories.
5. Lists routine actions that will have little to no impact on historic properties, and do not require review by the SHPO and consulting tribe(s) or NHOs.
6. Provides a process for expedited reviews when an undertaking may adversely affect a historic property.
7. Provides a standardized project review process for undertakings that are not exempt from further Section 106 review.
8. Provides a range of treatment measures to consider for resolution of adverse effects to historic properties.
9. Establishes a tiered approach for application of programmatic allowances to distinguish between allowances determined by staff with and without professional qualifications.

4. I am a federal agency that currently does not have an alternative procedure in place and would like to utilize the FEMA PPA for disaster recovery projects. Can my agency become a signatory to the PPA to fulfill its Section 106 responsibilities?

In order to utilize the FEMA PPA, federal agencies must provide financial assistance for the types of activities outlined in Appendix A of the PPA, and agree to adhere to the terms of the PPA to comply with the requirements of Section 106. For example, responsible entities who have assumed environmental responsibilities of HUD may utilize the FEMA PPA to fulfill their Section 106 responsibilities for undertakings such as temporary housing or debris removal (Stipulation I.A. (6)(b)).

If the activity is covered in Appendix A, the agency then must notify the signatories of the PPA in writing of its intent to use this agreement to achieve compliance with Section 106 requirements (Stipulation I.A.(6)(b)). The agency shall consult with the signatories regarding its compliance responsibilities and provide resumes of staff who meet the Secretary of Interior Standards to SHPOs for their records.

5. The Sandy Recovery Improvement Act of 2013, which amended the Robert T. Stafford Disaster and Relief and Emergency Assistance Act, allows federally recognized Indian tribal governments the option of requesting a Presidential or major disaster declaration independent of the state. How does the PPA address this?

Tribal governments and NHOs are invited signatories to the state-specific PA but may choose to opt out and develop a separate agreement with FEMA if they determine it is appropriate. Tribal governments can make independent disaster declarations or choose to be considered as part of a state's declaration request. They are not required to request a declaration independent of a state but have this option. Both tribal and state declarations for the same disaster event can use the PPA.

If the tribal government is a signatory to the state-specific PA or executes a separate PA with FEMA and receives a disaster declaration independent of the state, the PA is still applicable to the tribe. FEMA acknowledges that tribes and NHOs possess special expertise in assessing properties with cultural and religious significance to tribes and NHOs. Tribes and NHOs shall decide who meets the qualifications/standards as defined by tribes or NHOs for the review of the undertakings.

For additional information on tribal declarations: <http://www.fema.gov/media-library/assets/documents/85146>

6. How will consulting parties participate in FEMA's Section 106 review process as outlined in the PPA?

In keeping with the consultative requirements of the Section 106 regulations, FEMA will notify the public of proposed undertakings in a manner that reflects the nature, complexity, and significance of historic properties likely affected by the undertaking. FEMA will be responsible for inviting consulting parties along with grantee(s) and subgrantee(s). SHPOs and participating tribes or NHOs also can recommend inviting other consulting parties with a demonstrated interest in historic properties for consideration as a consulting party by FEMA. Other consulting parties will be invited to share their views and recommendations regarding the resolution of adverse effects during the consultation process set forth in the state-specific PA executed among FEMA, SHPO, SEMA, and if participating, tribe(s) or NHOs.

7. What revisions can be incorporated in the PPA by FEMA, SHPO, THPO, and SEMA for it to still be considered an ACHP designated PPA?

During the consultation to develop a PPA, certain sections of the agreement may be modified to allow states to focus on specific concerns unique to a state and to establish a review process that will help to better manage a state's historic properties. When modifying the PPA, FEMA, SHPOs, SEMAs, and/or tribes and NHOs should focus on modifications that address highlighted sections of the PPA. These sections can be tailored to the unique circumstances related to historic preservation reviews to include the following:

- Timeframes and communication methods,
- The roles and responsibilities of the PA's signatories,
- References to applicable local and state laws, and
- Programmatic allowances.

The other sections within the PPA should not be revised as they reflect understandings between FEMA and the ACHP that were critical to developing the framework for the PPA. Moreover, they summarize the consultations that were conducted to take into account the effect of FEMA's programs on historic properties. Modifications to the sections of the PPA that are highlighted will not change the status of the PPA designated by the ACHP provided that the modifications (1) are agreed to by FEMA, SEMA, and the relevant SHPO and/or THPO, and (2) do not substantially change the consultative role of other consulting parties.

8. What is the involvement of the ACHP when the PPA is being negotiated in my state?

Because FEMA and the ACHP have agreed upon the language in the PPA, the ACHP will not typically be a part of the negotiation process. However, should FEMA, SHPO, SEMA, and/or tribe(s) and NHOs request the ACHP to participate in consultation to address procedural or policy issues, high profile projects, effects on unique resources, or disagreements regarding the implementation of the PPA's stipulations, the ACHP may consider joining the consultation. An example of when the ACHP may participate in consultation is when a National Historic Landmark may be adversely affected as part of a FEMA-assisted undertaking, and the consulting parties assert that the consideration of alternatives is inadequate per the requirements of Section 110(f) of the NHPA. Once a state-specific PA is executed, FEMA will file a copy with the ACHP.

9. How should FEMA notify the ACHP that a state-specific PA has been executed?

Once FEMA has concluded consultation with the SHPO, SEMA, and/or tribes, NHOs, and other consulting parties, they will sign the state-specific PA and file a copy with all signatories and consulting parties, and the ACHP. The ACHP retains copies of all Section 106 agreements as part of its records so that it can monitor expiration dates and use the agreements as examples in training and consultations with other agencies.

10. What is the role of ACHP once a state-specific PA has been executed?

The ACHP monitors the implementation of the PPA by continuing to provide technical assistance as needed to FEMA during the implementation of projects. Should FEMA and the other signatories determine that a project-specific Memorandum of Agreement or PA is appropriate to address adverse effects that result from an undertaking, FEMA will be required to notify the ACHP pursuant to the terms of the PPA. The ACHP will participate in consultation with SHPOs, and/or tribes and NHOs, and other consulting parties, as appropriate, to resolve the adverse effects or policy or procedural issues. The ACHP will also review PPA progress reports and monitor successes and challenges in project outcomes. Pursuant to the terms of the PPA, the ACHP will participate in dispute resolution, as requested. FEMA and the ACHP also will ensure that best management practices and case studies from undertakings reviewed under state-specific PAs are posted regularly on the ACHP's Web site.